

In The United States District Court for The
Eastern District of North Carolina
Western Division

FILED

MAR 16 2020



NO: 5:17-CR-134-BR(1)

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
BY JAB DEP CLK

United States of America Notice of filing of Additional objections
Plaintiff to Pre Sentence Report and presentment of
VS. Information to Mitigate Sentence
Xavier Milton Earquhart Imposed pursuant to Fed R Crim P 32

Comes Now, Xavier Milton Earquhart hereinafter "MR. Earquhart"
objecting party" or "defendant in propria persona sui juris and
defendant in Error of the above captioned case and hereby states
in writing the foregoing additional objections to material, Information
Sentencing guideline ranges, Policy Statements contained in or
omitted from the presentence report and to present information
to mitigate the sentence

MR. Earquhart pursuant to Fed R. Crim. P Rule 32 (F) (2) hereby
gives notice as the objecting party that a copy of the foregoing
Additional objections to presentence report and presentment of information
to mitigate sentence imposed pursuant to Fed R Crim P Rule 32 (F)
(1), 32 (I) (4) (A) (ii) has been served upon the United States
Probation Office and the United States Attorney's Office (opposing party)
This pleading is in addition to the objections filed on or about

①

Jan 2nd 2020

At #16

Jolietta Robinson Actions were not criminal actions and therefore she can not be alleged to be a participant. the record does not reflect which properties if any she located as potential properties to buy, and the record does not state that she located any that were purchased and referenced to within the superseding indictment

At #16

The government alleged "investigators determined the total balance of the mortgages at the time MR. Earquhart filed the fraudulent SOSI's was \$1,056,512.78" The government failed to produce any Evidence at trial and at the original sentencing of any payment history of the loans to sustain proof of this alleged out standing amount and the alleged amount possible includes amounts that must be excluded pursuant to USSC 2B1.1 Cmt 3 (D)(i)

At #17

2 The government alleged "Earquhart conducted \$1,053,688.41 in monetary transactions involving criminally derived property where the value of this property exceeded \$10,000.00 The government failed at trial and at the original sentencing to submit any proof to sustain the claim and failed to show when this alleged offense ended This amount is incorrect as the government failed to meet

Element of the underlying offense of 18 USC 1344(2) for counts 8-10 which include the: "under custody or control of a financial Institution" Element and the "By means of false or fraudulent pretense representations, or promise" element

At # 19, and 28

the government Alleged Deutsche Bank Sustained a loss of \$ 121,566.93 This amount includes Amounts prohibited pursuant to USSC 2B1.1 cmt 3 (D)(i) at the original Sentencing hearing the Attorney for Deutsch Bank stated on record in open Court that the total amount of Damages that our client is asking for a restitution is \$ 121,566.93. And that amount is composed in part of our Attorney fees incurred in prosecuting a civil action in order to reinstate our lien that was wrongly cancelled and then the interest that accrued from the date of the fraud to the current date that we incurred because we were unable to foreclose on the property so the loan balance continued to accrue interest pursuant to the Deed of Trust and the note evidencing the indebtedness And then there were some other charges for county tax fees and other fees and costs that were incurred"

At # 20

(3) the government Alleged "Based on the investigation between 2013 & 2016 Eargusart is Accountable for an intended loss of \$ 1,801,000.71

Although the Actual loss associated with the instant offense is unknown it appears that Earquhart caused an actual loss of at least \$1,500,561.86. In counts 1-7 loans were funded from BB&T, Suntrust, and Capital Bank. All funds were repaid before sentencing except \$5,200.00 owed to Capital Bank funds were repaid through foreclosure of the subject property of counts 1-7, cash payments directly made to Banks, payments made through Bankruptcy. Capital Bank has sold the remaining \$5,200.00 owed to a third party for counts 1-7 of the superseding indictment. There are no funds owed to the victims BB&T, Capital Bank, and Suntrust and pursuant to USSC 2B1.1 Application Note (E)(i) as payment was made in full before re-sentencing to Capital Bank, Suntrust and BB&T Bank.

Further more pursuant to USSC 2B1.1 Application Note "victim" means any person who sustained any part of the Actual loss and pursuant to 2B1.1 Application Note (3)(i) Actual loss means the reasonably foreseeable pecuniary harm that resulted from the offense. The government mistakenly wishes to include \$311,213.00 as an intended loss.

for counts 1,3,5 & 6 as it is alleged that MR. Earquhart applied for Banks loans the USSC 2B1.1 Application Note limits victim to any person who sustained Actual loss and pursuant to (3)(i) Actual loss means reasonably foreseeable pecuniary harm that resulted from the offense in counts 1,3,5 & 6 the alleged offense is submission of Loan Applications, subsequently the loan applications were denied.

(4)

and the subject loans were not funded and therefore the Alleged banks of count 1, 3, 5, 6 for Enhancement purpose are not victims as they did not sustain any part of the Actual loss because the loans were not funded as the banks of count 1, 3, 5, 6 are not victims and the reasonable foreseeable pecuniary harm Enhancement element does not apply to MR. Earghart as there is no victim and no offense for Enhancement purpose for counts 1, 3, 5, 6 and therefore the \$311,213.00 shall be excluded

any loss for Guerda Dominique in any amount is misapplied as at #36 of the revised presentence Investigation report Alleges a Actual loss for Guerda Dominique between the amount of \$70,000 to \$139,000 As it is alleged she is a victim ussg 2B1.1 Application Note (3)(i) Actual loss means the reasonably foreseeable pecuniary harm that resulted from the offense and pursuant to 2B1.1 Application Note "Victim" means any person who sustained any part of the Actual loss the only Alleged Actual loss for counts 1-7 can only be the Alleged funded loans from Suntrust, BB¹, T, and Capital Bank. The Actual loss is limited to the harm resulted from the Alleged offense In the instant case of counts 1-7 its Alleged that MR. Earghart used a fraudulent Deed to obtain ownership of the subject property of counts 1-7 that alone is not the offense MR. Earghart was indicted for and said Alleged act is not a federal offense MR. Earghart was indicted for Bank fraud therefore

the only harm that resulted from the Alleged bank fraud offense of counts 1-7 was the funded loans which were all repaid before sentencing therefore no Enhancement points are warranted under uss 2B1.1(B)(1)(I) for counts 1-7

At # 22

The alleged offense does not include any victims that were reasonably foreseeable pecuniary harm arising from the alleged frauds and there was no proof submitted at trial or at the original sentencing that showed that the Actual lien holder's are National City Bank of Indiana DBA First Franklin, Bank of New York Mellon, BOA, Equifirst Corporation, Nationsstar, Prime lending, A Plains Capital Company, Acopia LLC, and ocwen Loan Servicing. further more the record lacks evidence that the beneficial interest in the Deeds of trust have not been transferred at sentencing

At # 25

loss for Guerda Dominique Alleges \$170,000.00 loss this Alleged loss is unsupported by any evidence and may contain interest and finance charges from the previous mortgage she obtained for the property further more 2B1.1 cmt victim Definition and pursuant to 2B1.1(A)(1) as 18 USC 1344 offense refers to 2B1.1, and the offense character Cantake the amount of Alleged loss from the Alleged bank fraud She is not a victim as she did not sustain any amount of the Alleged loss from the offender and the offense was Alleged to be the submission

(16)

of Bank loan applications

At # 26, 27, and 29

The government Alleges that Sidney Hairston, Winter Bunnell and Latrel Johnson suffered from substantial financial hardship Each of the Aforementioned lost ownership rights (property Deed) in the property as each of the properties associated with the above forementioned named person was foreclosed upon pursuant to North Carolina State Law NC gen Stat 47F-1-101 et Seq as they failed to pay the Homeowner association fees this is also stated as a clause of the Deed of trust which was presented as Trial Exhibits Furthermore the above listed persons are not victims and the record does not reflect how the Aforementioned persons are Victims or how the Alleged fraud caused substantial financial hardship

At # 28

this statement is a duplicate of Item #19 see the above mentioned objection for #19 it is the same for #28

At # 30

the record lacks any evidence that Blue bear properties sustained a loss of \$ 121,843.57 for 5213 Gable Ridge Rd furthermore this property was not owned by or under the custody or control of a financial institution the property was under the custody and

Control of the Company that the property was deeded to and under the control of the trustee listed in the deed of Trust or any substituted trustee as this is stated in the deed of trust presented in the Exhibit presented at trial therefore the Elements of 18 USC 1344 Bank Fraud was not met and no evidence has been submitted to sustain this claim

at # 31

Alleged lost of \$57,031.69 was repaid in full in 2018 there is no evidence to support this Alleged loss

At # 32

No evidence to sustain this alleged loss. No proof that FNT is a financial institution, or proof this company was granted any beneficial interest in the Deed of Trust by an assignment or proof this company is currently the owner of any beneficial interest No proof that FNT suffered from the potential loss of \$50,000.00

At # 34

No proof of Evidence is on the record that movement Mortgage ("MM") was required to repurchase the loan further more the record does not contain evidence that "MM" is a financial institution that held a Beneficial interest in the Deed of trust. In the original Judgment

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the court awarded "MM" \$24,306.45 which said amount was not supported by evidence as there was no proof the loan was repurchased and sold by "MM" for a loss

At # 35

Select Servicing, Fenil Shah, and any additional alleged victims are not victims as the record lacks evidence to sustain this claim

At # 36

- BB¹ T - repaid in full in 2018 before resentencing
- Suntrust - repaid in full in 2018 before resentencing
- Guenda Dominique Not victim of the offense charged see USSG 2B1.1 Application Note for "Victim"
- Capital Bank - repaid in full in 2018 before Resentencing
- Winter Gunnell, Latiff Johnson, and Sidney Hairston lost their home to the HOA foreclosure sale and therefore lost the deed of the house and any and all interest in the property including any and all equity and subsequently they are not victims as they did not sustain any loss see USSG 2B1.1 Application Definition for "Victim"
- Blue Bear properties Not victim see 2B1.1 Definition for "Victim"
- Fidelity National title, Movement Mortgage, No proof Companies are financial institutions, No proof of any sustained loss, No proof Companies are or have a beneficial interest in the Deed of trust pursuant to an assignment of Deed of Trust or proof

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that the company currently owns a beneficial interest in the deed of trust

- Deutsche Bank alleged loss Included forbidden fees as stated on the record by the Attorney that represents Deutsche furthermore this entity is not a victim, no proof of any substantiated loss, no proof company have a beneficial interest in the deed of trust pursuant to a assignment of Deed of trust or proof the company currently owns a beneficial interest in the deed of trust The amount of the actual or reported loss shall be \$0.00 as courts 8-16 the alleged victims are not victims and for counts 1-7 the loans were repaid in full before sentencing any estimate of loss not supported by any evidence cannot be reasonable

At # 39, 47, and 48

Motions for Appropriate relief are pending as they (convictions) were obtained in violation of the right to counsel see United States v. Bowling 4th Cir 2014 where the court held "Bowling asserts he did not" knowingly, intelligently and unequivocally waive his right to counsel [,"] a defendant generally may not collaterally attack prior convictions used to enhance his sentence United States v. Bacon 94 F.3d 158, 162 4th Cir 1996) To be sure the Supreme Court held in Curtis v. United States 511 US 485, 48 (1994)

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that convictions obtained in violation of the right to Counsel fall outside the general rule - MR. Earguhart did not appear in court to plead guilty and MR. Earguhart has never signed any plea therefore the pleas were entered without MR. Earguhart's consent furthermore MR. Earguhart did not knowingly, intelligently and unequivocally waive his right to Counsel Therefore Counsel of record for the charges MR. Earguhart was convicted of would have to have appeared in court with MR. Earguhart which did not happen as MR. Earguhart has never appeared in court to plea to any of the Alleged Convictions. His Criminal History does not Accurately reflect his proper Category. His correct Category is a level 0 as he does not have any criminal convictions that he can be enhanced for

#74

The property was foreclosed upon as MR. Earguhart was arrested for the instant offense and unable to make payments. The property was sold by the trustee listed within the deed of trust for DBIT loan count 2 of the superseding indictment

At #80 ussg 2B1.1 (B)(1)(I)

The loss must be reduced to the amount of funded loans for counts 1-7 \$184,987 and subsequently that amount must be reduced to \$0.00 as the funds were repaid before re-arresting

At # 81 2B1.1 (B)(2)(A)(iii) And #84 2B1.1 (B)(1b)(B)

the enhancement is misapplied because the homes of count 8-10 were not under the custody or control of a financial institution and the Alleged Victims that are Alleged to have suffered financial hardship are not victims. further more there was no possession of a dangerous weapon including a firearm involved in the connection with the Alleged offense

furthermore A threshold issue is which Guidelines version applies The court must use the version effective at sentencing unless this would cause an ex post facto violation; If so the court must use the version in effect when the offense was committed USSC 1B1.1 (A), (B)(1). The Court must apply the same version in its entirety but also "consider subsequent amendments" that are "clarifying" and not "substantive changes" Id 1B1.1 (B)(2) Earquhart's Alleged Scheme ended in 2015 (May 2015). the 2018 current guidelines are in effect at this time Because applying the 2018 Guidelines would cause a ex post facto violation the court must apply the 2013 Guidelines as the alleged offense was completed in May 2015 and the 2013 guideline were in effect in the 2013 guideline there were no enhancement for "substantial financial hardship" And "possession of a dangerous weapon including a firearm in connection with the offense" and the 2018 Guidelines Do not make these enhancements retroactive

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At # 82 USSG 2B1.1 (B)(9)(B)

the enhancement is misapplied as MR. Earquhart gave correct information during the Bankruptcy Proceeding the government points to MR. Earquhart's Alleged Statements Alleging that he provided fraudulent information related to his income and assets and that he provided involvement in the transaction related to 5213 Gable ridge in Holly Springs North Carolina the government also points out that MR. Earquhart made \$1,304,804.71 from real estate transactions However MR. Earquhart disclosed this information to his Bankruptcy counsel and his counsel failed to Inform the bankruptcy court however at the time the Bankruptcy petition was filed the information was correct and the record does not provide any proof that the petition contained any fraudulent information the enhancement is unwarranted and any statement made to the bankruptcy court was never made with intent to defraud or with fraudulently furthermore MR. Earquhart's failure to provide additional information to the Bankruptcy court resulted in Ineffitue assistance of Counsel and MR. Earquhart can not be held liable for his Counsel inactions

At # 83 USSG 2B1.1 (B)(10)(C), # 84 USSG 2B1.1 (B)(11)(A)(ii), and # 85 USSG 2B1.1 (B)(16)(B), and 88 3C1.1, and # 87 3B1.1 (C)

these Enhancements are misapplied as they are specific offense characteristics for counts 8-10 and the Homes of Count 8-10 were not owned under the custody or control of a financial institution and therefore the counts of

8-10 of the superseding indictment failed to state an offense against the laws of the United States. The horses were under the custody and control of the trustee listed within the deed of Trust as they held the power of Sale, and M.E. Equihart Company held Equitable title to each property the Bank that loaned the money to purchase the horse never held legal or equitable title (Deed) or legal title (power of Sale) the controlling laws for the Deeds of trust are North Carolina Statutes

NC Gen Stat 39-67 Construction of Conveyances to or by trust 39-6.7 (A) A Deed, will, beneficiary designation or other instrument that purports to convey, devise or otherwise transfer any ownership or security interest in real or personal property to a trust shall be deemed to be a transfer to the trustee or trustee or that trust.

Deeds of Trust give the right to foreclose under a power of Sale and is enforceable according to its terms see in re Clayton -- N.C App at ---, 802 S.E. 2d at 924 ("The right to foreclose exists if there is competent evidence that the terms of the Deed of trust permit the exercise of the power of Sale under the Circumstances of the particular case") (internal marks and citation omitted)

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The government theory at trial was that the houses of count 8, 9, and 10 was that the property was owned by or under the custody or control of a financial institution when in fact North Carolina law and the Deed of trust presented as Trial Exhibits by the government for said counts contradicted NC law statutes and the trustor's intent stated within the Deed of trust MR. Farguhart's contrary to NC state law convictions affect the foregoing

- At # 78

the conviction for 18 USC 1028A(A)(1) the 2yr Active Sentence is unwarranted as this conviction is associated with counts 8-10 which are convictions contrary to law as the properties of count 8-10 were not owned by or under the custody or control of a financial institution

- at # 79 1 pt shall be deducted as the conviction for 18 USC 1957 is based upon convictions of 18 USC 1344 for counts 8-10 and as stated above the security interest in the Deeds of Trust for count 8-10 were transferred to the trustees of Each deed of trust which were not financial institutions and the jury instructions did not charge the jury with finding the trustees to be financial institutions

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SEE # 78, 79, 80, 81, 82, 84, 85, and 87 OBJECTIONS

At # 84 USSC 281.1 (B)(1)(A)(i) and (ii)

The superseding Indictment for Count 13 states in part that "the defendant Xavier Milton Esquihart, aiding and abetting others known and unknown to the grand jury, did knowingly possess, transfer, and use, and did willfully cause others persons, during and in relation to a felony violation enumerated in 18 USC 1028A (C) to wit, the felony offense identified in Count 10 herein, knowing that said means of identification belonged to Jim And Adm all in violation of title 18 USC 1028 A (A)(1) and (2)". the enhancement is misapplied as the Pse states "In the case-at-bar, the defendant owned and used a Notary Seal printer to forge Notary Signatures and Seals, and apply fraudulent notary seals to lien releases involved in the instant offense. The defendant used the identities of Nation Star employees, Justin Moon and Adrienne Danielle Meyer, and signed the fraudulent document on behalf of Moon and Meyer." The notary seal printer ("Rubber stamp printer") is not a device making equipment pursuant to 18 USC 1029 (E)(6) as the term device-making equipment means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device. Pursuant to 18 USC 1029 (E)(4) and (E)(2) the term access device and counterfeit mean any legitimate or counterfeit, fictitious, altered or forged card, plate, code, account number, electronic, serial number, mobile identification number, personal identification number or other telecommunications service, equipment or instrument identifiers

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or other means of account access that can be used alone, or in conjunction with another Access device, [to] obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument)'

the Notary Stamps are correctly Identified by the superseding indictment as "means of Identification" as it Identifies the Notary and person who signed the lien release. Further more the Notary Stamps are not a forged Card, plate, code, account number, electronic Serial Number, mobile identification number, Personal identification number or other means of Account Access.

MR. Earquhart received a 2 yr Active sentence for the conviction of Count 13 of the Superseding indictment as he was convicted of 18 USC 1028 A (2) and pursuant to USSC 2B1.6 Cmt 2 He can not receive any enhancement for the transfer, possession, or use of a means of identification when determining the sentence for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under USSC 1B1.3 (Relevant Conduct) "means of Identification" has the meaning given that term in 18 USC 1028 (D)(7) the Notary Stamps fall squarely within the meaning given that term in 18 USC 1028 (D)(7) Therefore the enhancement is misapplied as the Notary Stamps "Rubber Stamps" are not a Device and the rubber stamp printer is not Device making equipment further more the government failed to present any evidence to sustain a conviction for Count 13 of the superseding indictment and to sustain this enhancement

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At #85 281.1(B)(16)(B)

Because the assets acquired from the alleged fraud from counts 8-10 which include the gold that was seized the government alleged the gun was involved in the offense however the alleged offense of counts 8-10 were not committed as the properties were not under the custody or control of a financial institution and therefore the gun was not involved in the alleged offense additionally the record does not show a nexus between the alleged offense and the gun. The gun was unloaded without the magazine, in a gated indoor climate controlled pad locked unit. The storage unit was not in MR. Earquhart's name the storage unit was not a location used to house any alleged fraud related materials and the storage unit was located in the state of TX and all alleged fraud activities were alleged to have taken place in the state of NC. The government acquired knowledge of said storage unit by way of a unlawful search a seizure of his person and car which occurred on 05-11-2017 "Date of Arrest"

At the time this alleged fraud was committed 281.1(B)(16)(B) was not a legislated enhancement and therefore this enhancement is not applicable to MR. Earquhart and enhancing MR. Earquhart with said enhancement would create a Ex post facto violation

At #87 381.1(C)

Robinson did not testify that she had knowledge of any illegal activity and her actions were not criminal as she is not responsible for any criminal

Actions. the trial testimony of Ms. Robinson Does not reflect any Nexus between any criminal Activity that Mr. Earquhart was convicted of. pursuant to 3B1.1(c) Cmt Application Note 4 the Court should Consider the exercise of decision making Authority, the Nature of participation in the commission of the offense. Ms. Robinson Alleged Actions of Searching for foreclosed properties, leasing Storage units, Wiring money, and purchasing Cashiers checks for Mr. Earquhart Are not criminal offenses or being a participant in the commission of offenses. Mr. Earquhart was convicted of in Error and she does not qualify as a participant as her actions did not facilitate the alleged crimes and furthermore Counts 8-10 of the Superseding indictment the homes were not owned by or under the custody or control of a financial institution the enhancement is unwarranted.

At# 88 3C1.1

The District Court did not find the Alleged Statements of Mr. Earquhart as materiality or to be perjurious

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It's Alleged Mr. Earquhart provided false financial information during his pretrial Services interview on May 11th 2017 and June 9th, 2017

The government Alleges that Mr. Earquhart was advised by the US probation office that providing false information during a pretrial Services interview was a separate crime and could be used to deny his release before trial or increase his sentence if he convicted

MR. Earquhart requested counsel to be present at both interviews however Counsel was not appointed until after the pretrial interview was conducted on both dates

MR. Earquhart's Alleged statements were not made with willful intent to deceive. MR. Earquhart's Alleged statements were uncounseled and anything that he may have said when interviewed by probation for the creation of the pretrial services report was not material to the alleged offense and was not done willfully with the intent to deceive

During each pretrial services interview MR. Earquhart was entitled to have counsel present which he was deprived of that constitutional right even if MR. Earquhart disclosed a different income amount there was a forfeiture count in the indictment. If counsel was present counsel would have instructed MR. Earquhart not to answer any questions regarding income

p20 The government has cited United V. Savage 885 F.3d 212 (4th Cir 2018) as an additional basis of authority to apply the 3C1.1 Enhancement but failed to state in its argument the Savage court also held the sentencing court also "must specifically identify the perjurious statements and make a finding either as to each element of perjury or that encompasses all of the factual predicates for a finding of perjury" United States V. AKINROYE, 185 F.3d 192, 205 (4th Cir 1999) (quoting United States V. Gordon, 61 F.3d 263, 270 (4th Cir 1995)); See also Dunnigan, 507 US. at 95, 113 S.Ct 1111

(providing an example of acceptable specificity when the court stated that "the defendant was untruthful at trial with respect to material matters" and that this case"). "[E]lse calls should be resolved in favor of extending deference to the trial court[s] where they hold the institutional advantage" United States v. Andrews, 808 F.3d 964, 969 (4th Cir 2015) (quoting Miller v. Fenton, 474 U.S. 104, 114, 106 S.Ct. 445, 88 L.Ed. 2d 405 (1985)) Held at United States v. Savage, 885 F.3d 225 (4th Cir 2018) In the instant case the Enhancement is misapplied as the alleged financial information was not made under oath which the 18 USC 1621 perjury statute requires as an element. The enhancement is unwarranted as the district court failed to specifically identify the perjurious statements and make a finding either as to each element of perjury or that encompasses all of the factual predicates for a finding of perjury. In addition to the above stated reasons the enhancement furthermore does not apply as the alleged financial statements did not relate to the defendant's offense of conviction and any relevant conduct, or a closely related offense therefore the Enhancement is not Applicable

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at #83

The government's statements during trial was that any one could look up the deed information, print deeds, and file them simply from a cell phone the government repeated this to the jury over and over and over. the enhancement is unwarranted as the case revolves around Mr. Earguhart alleged activity of filing false documents the case does not involve hiding assets or transactions or complex or especially intricate offense conduct pertaining to the execution or concealment of an offense Therefore the enhancement is unwarranted

Supervised release objections

Pursuant to 18 USC 3583 (A) the court in imposing a sentence to a term of imprisonment for a felony or a misdemeanor may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561 (B)

[18 USC 3561 (B)] MR. Earquhart hereby objects to any term of supervised release after imprisonment and pursuant to 18 USC 1344, 18 USC 1622 (A)(1) and 18 USC 1957 Congress has not required any supervised release after imprisonment. Furthermore MR. Earquhart was sentenced to 32 years of imprisonment and the court of appeals has vacated his sentence. Furthermore MR. Earquhart was enhanced with many enhancements that are not applicable to him or his case and has also been placed in the wrong criminal history category without the improper specific offense characteristic enhancements MR. Earquhart would have a guideline offense range of 4 to 12 months MR. Earquhart has been incarcerated as of this day for 35 months he has served a minimum sentence of 4 to 8 times, programmed, and has been free of any disciplinary reports / infractions, supervised release is unwarranted and for the above stated reasons MR. Earquhart hereby objects to any term of probation / supervised release

Restitution Objection

MR. Eargulhart, hereby objects to any restitution that may be ordered as the alleged victims of counts 1-7 include BB&T, Suntrust, and Capital Bank have been repaid before resentencing by way of the property at 2732 Knowles Street, Raleigh NC being foreclosed on and sold for \$116,000.00 furthermore Suntrust was paid in full before MR. Eargulhart was indicted and the alleged victims of counts 8-10 the government failed to meet the burden of proof that the alleged victims were financial institutions and that the real property of counts 8-10 was not "owned by or under the custody or control of a financial institution pursuant to NCGS 39-6.7 (A) which states

"A deed, will, beneficiary designation, or other instrument that purports to convey, devise, or otherwise transfer any ownership or security interest in real or personal property to a trust shall be deemed to be a transfer to the trustee or trustees of that trust

Therefore the properties of Count 8-10 were owned by the trustee of the trust. The government also proved this a trial with the government's witness "MERS" and the Deed of Trust presented by the government

Any restitution is unwarranted and objected to

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Objection to venue and subject-matter jurisdiction, and legislative jurisdiction on counts 1-7 of the superseding indictment the government failed to prove venue for these counts the evidence presented by the government shows that the alleged conduct of MR. Farguhart was conducted outside of the Eastern District of North Carolina. Counsel for MR. Farguhart moved for a oral 2e motion which was subsequently denied.

The government failed to prove subject-matter jurisdiction for all counts MR. Farguhart moved to dismiss the indictment pursuant to Fed R crim P 12(B)(2) The government failed to prove jurisdiction before, during, and after trial which deprived MR. Farguhart to be deprived of his constitutional right of Due process. Further more counts 8-10 the property was not under the custody or control of a financial institution and the property was not owned by a financial institution. Subsequently counts 11-13 must be dismissed as a matter of law.

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Objection to forfeiture order

Pursuant to 18 USC 982(A)(2) the court in imposing sentence on a person convicted of a violation of 18 USC 1344 affecting a financial institution shall order, the person forfeit to the United States any property.

constituting, or derived from Proceeds the person obtained directly or indirectly as the result of such violation.

Pursuant to the Forfeiture Notice of the superseding indictment the United States of America, Sought MR. Earquhart to forfeit any property constituting or, derived from the gross proceeds obtained, directly or indirectly as a result of the said offenses including but not limited to:

(A) ^{\$}1,304,804.71 Constituting the gross proceeds of the charged offenses;

(B) ^{\$}291,403.31 in Gold Bullion Cans and

(C) Recording Studio Equipment,

A. 2 Genelec 8351 Apm Monitors

B. 1 Genelec 7360 Apm Smart Active Sub

C. 1 GLM Loud Speaker Manager V2.0

D. 1 Sony G800 -PAC

E. 1 SSL AWS 948 Demo, SN 4237

The Congressional intent of forfeiture is limited to property constituting or derived from proceeds the person obtained directly or indirectly as the result of such violations - All of the aforementioned Items the Government seeks as forfeitable property are alleged to have been obtained from counts 8-10 of the superseding indictment however

the government has misapplied the title 18 USC 1344(2) statute to MR. Farguhart's Alleged conduct as the essential elements of 18 USC 1344(2) is that the victim must be a "financial institution". The government failed to meet the burden of proof that the Alleged victim was a financial institution and therefore, the essential element of 18 USC 982 A (2) has not been met as the alleged violation of 18 USC 1344 did not affect a financial institution and therefore, the court lacks subject matter and legislative jurisdiction to enter a order for forfeiture.

Pursuant the united states of America court of appeals for the fourth Cir in case NO. 18-4471 united states of America V. X-wen Farguhart " The court erred in treating the \$1,304,804.71 in proceeds from the home sales as receipts " derived from a financial institution " " The proceeds from the home sales come not from the lien holder, but from third party purchasers "

The government alleged that Mr. Farguhart used \$1,304,804.71 in proceeds to purchase the aforementioned property and other items seized from MR. Farguhart and in the possession of the government however, the Alleged proceeds and property are Not forfeitable to the united states as they were not Constituted or derived from proceeds obtained directly or

indirectly as the result of the alleged offense of 18 USC 1344(2) for counts 8-16 of the superseding indictment.

Furthermore the government argued that by filing the fraudulent SOSI's which made it appear as though the properties were free and clear of encumbrances Earguhart "stole collateral" that was owned by or under the custody or control of a "financial institution" Brief for the United States at 20 Earguhart then successfully acquired \$1,304,804.71 in proceeds by selling "the homes to the third party purchasers" United States v. Xavier Earguhart 4th Cir Court of Appeals Case No 18-4471

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According to the testimony of one lienholder's representative although Earguhart's conduct created a "cloud on the title" the lienholder still held a security interest in the subject property and could collect monthly payments or initiate foreclosure. The mortgage of the same property similarly testified that he had not been excused from his obligation under the mortgage and had never stopped making monthly payments on

officer of another entity listed in the RSR as one of the Affected Lienholder - testified that his company had sold its interest in the property 1 year before Farguhart's offense

For the aforementioned Reasons the court lacks subject matter and legislative jurisdiction to enter any forfeiture order against MR. Farguhart. The court must as a matter of MR. Farguhart's Constitutional rights enter an order to return MR. Farguhart property otherwise MR. Farguhart's 4th Amendment Constitutional Rights will be violated as he is guaranteed the right to be secure in his person, house, papers, and effects against unreasonable searches and seizures and his 8th Amendment Constitutional right will be violated as he is guaranteed to be protected against cruel and unusual punishment

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farmville VA 23901

The undersigned hereby certify under penalty of perjury that on this date a copy of ' Notice of Filing of Additional objections to presentence Report and presentment of Information to mitigate Sentence Imposed pursuant to Fed R Crim P 32 and Certificate of Service pursuant to Fed R Crim P 32 (F)(2) has been served on the foregoing persons at the foregoing address by placing said documents in a properly addressed envelope and placing said envelope in the hands of the Piedmont Regional Jail staff with postage prepared by me undersigned with First Class postage

United States Attorneys office
310 Newbern Ave
STE 300
Raleigh NC 27601

US Probation office
2 princess st
Wilmington NC 28401

US District Court EDNC
310 Newbern Ave
STE Raleigh NC 27601

AA Your Dad loves you
I miss you, your very
Beautiful and your way
Important and your way
You must be my self
In your Always do
and Always do
Your Best

AA
Love
Dad
Xavier Earguhart

pg

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Respectfully Submitted
Xavier Milton Earguhart
This 9th day of March 2020
In propria persona
Sui Juris
#09960687

Piedmont Regional Jail
801 Industrial Park Rd
Farmville VA 23901